

BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of ARM 24.114.301)	HEARING ON PROPOSED
definitions, 24.114.401, 24.114.402,)	AMENDMENT AND REPEAL
24.114.403, 24.114.404, 24.114.405,)	
24.114.406, and 24.114.407)	
pertaining to general provisions,)	
24.114.501, 24.114.502, 24.114.503,)	
and 24.114.510 pertaining to licensing,)	
24.114.2101 pertaining to renewals,)	
24.114.2301 pertaining to unprofessional)	
conduct, and 24.114.2402 pertaining)	
to screening panel, and the proposed)	
repeal of 24.114.2401 pertaining to)	
complaint procedure)	

TO: All Concerned Persons

1. On March 30, 2006, at 1:00 p.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects (Board) no later than 5:00 p.m., on March 24, 2006, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdaarc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic administrative rule review, the Board is proposing a substantial number of revisions to its rules. Some of the proposed amendments are technical in nature, such as renumbering and reorganization of rules for easier flow and understanding and to streamline the rules. Similar technical changes substitute modern language for archaic phrasing and neutral for gender-specific references, amend catchphrases for accuracy and update obsolete or inappropriate statutory citations. Accordingly, the Board believes that there is reasonable necessity to generally amend certain existing rules at this time. Where additional specific bases for a proposed action exist, the Board will identify those reasons immediately following that rule. Additionally, the Board has determined it is reasonably necessary to amend authority and implementation cites throughout to accurately reflect all statutes

implemented through the rules, to provide the complete sources of the Board's rulemaking authority and to delete references to repealed or erroneous statutes.

4. The rules proposed to be amended are as follows, deleted matter interlined, new matter underlined:

24.114.301 DEFINITIONS (1) "Emergency" means earthquake, eruption, flood, storm, hurricane, or other catastrophe designated as a major disaster or emergency by the president of the United States or governor or other duly authorized official of the state.

(2) "NCARB" means the National Council of Architectural Registration Boards located at 1801 K Street NW, Suite 1100, Washington, DC, 20006-1310.

(1) and (2) remain the same but are renumbered (3) and (4).

AUTH: ~~37-65-101, 37-65-102, 37-1-319, 37-65-204, MCA~~

IMP: 37-1-319, 37-65-204, 37-65-308, MCA

REASON: The Board determined it is reasonably necessary to amend the rule to add two definitions that existed elsewhere in the Board rules. Keeping all definitions in one rule furthers consistency and lessens confusion among readers.

24.114.401 FEE SCHEDULE (1) The following fees apply:

(a) Application fee for applicants registered in another state or jurisdiction	\$100
(2) (b) Biennial renewal (if paid by July 31st)	110
(3) (c) Late biennial renewal (if paid after July 31st)	170
(4) (d) Original license fee, if licensed in an even-year <u>(prorated for licensure in midrenewal year)</u>	80
(5) Original license fee, if licensed in an odd year	40
(6) and (7) remain the same but are renumbered (e) and (f).	
(8) remains the same but is renumbered (2).	

AUTH: 37-1-131, 37-1-134, 37-65-204, 37-65-307, MCA

IMP: ~~37-1-134, 37-65-201, 37-65-304, 37-65-306, 37-65-307, MCA~~

REASON: It is reasonably necessary to amend the rule to delete the original license fee for licensure in an odd-numbered year. The Board will no longer charge a specific fee for licensure in the middle of a 2-year licensure period, but will prorate the original licensure fee.

24.114.402 INDIVIDUAL SEAL (1) remains the same.

(2) All technical submissions prepared by an architect ~~shall~~ must be stamped and signed with the architect's seal or the seal of the firm. The permit set must bear the architect's original signature. Electronically generated seals and signatures are acceptable under this rule.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-308, MCA

REASON: The Board determined it is reasonable and necessary to amend the rule to allow electronically generated seals and signatures on technical submissions. Due to current technology, and because more firms and licensees have the capability to submit plans electronically, the Board is amending the rule accordingly.

24.114.403 BUSINESS ENTITY PRACTICE (1) remains the same.

(2) Nothing shall prevent a ~~partnership (including a registered limited liability partnership)~~, professional limited liability company, or a professional corporation ~~(including a professional corporation)~~ from performing or holding itself out as able to perform any of the services involved in the practice of architecture, provided that:

(a) two-thirds of the total ~~general partners (if a partnership)~~, managers (if a professional limited liability company), or directors (if a professional corporation) are registered under the laws of any United States jurisdiction or any foreign jurisdiction approved by the board as architects or engineers; and

(b) one-third of the total ~~general partners~~, managers or directors are registered as architects in Montana.

AUTH: 35-4-301, 35-8-1304, 37-1-131, 37-65-204, MCA

IMP: 35-4-205, 35-4-207, 35-4-208, 35-4-209, 35-4-301, 35-8-1304, 37-65-101, 37-65-302, MCA

REASON: It is reasonably necessary to amend the rule to accurately reference and implement the Board's authority regarding professional corporations and professional limited liability companies. The Board is statutorily authorized to restrict or condition ownership of these professional entities to preserve ethical standards of the profession and further the protection of the public.

24.114.404 ARCHITECT PARTNERSHIPS TO FILE STATEMENT WITH BOARD OFFICE (1) All licensees who enter into partnerships, limited partnerships or profit corporations, sub-chapter S corporations or any other form of business entity in which their professional talent and service are utilized, ~~must~~ shall file with the board office a statement of the existence of the business entity and ~~of their the licensee's~~ relationship to it.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 35-4-209, 37-65-302, MCA

24.114.405 QUALIFICATIONS REQUIRED FOR MONTANA BRANCH OFFICE (1) remains the same.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-303, ~~37-65-305~~, MCA

24.114.406 SOLICITATION OF BUSINESS BY NONRESIDENT ARCHITECTS FROM OTHER STATES (1) A nonresident architect ~~who holds a~~

~~current, unexpired, unrestricted license to practice architecture issued by the state in which the architect's principal offices are located and who holds a current NCARB certificate, may, upon furnishing the board with verification of licensure from the other state licensing authority, and verification of NCARB certification, offer architectural services in this state, but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board. may offer architectural services in this state without compensation upon submission to the board of verification of the following:~~

~~(a) a current, unexpired, unrestricted architecture license issued by the state where the architect's principal offices are located; and~~

~~(b) a current NCARB certificate.~~

~~(2) The nonresident architect may not accept a commission or otherwise engage in the practice of architecture within this state until licensed by the board.~~

AUTH: ~~37-1-131, 37-1-319,~~ 37-65-204, MCA

IMP: ~~37-1-305,~~ 37-65-301, MCA

24.114.407 EMERGENCY USE OF ARCHITECTS (1) Nothing shall prevent a person who is not currently registered in this state and is currently registered in another United States or Canadian jurisdiction, from providing uncompensated (other than reimbursement of expenses) professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector, acting in an official capacity. ~~"Emergency" shall mean earthquake, eruption, flood, storm, hurricane, or other catastrophe that has been designated as a major disaster or emergency by the president of the United States or governor or other duly authorized official of the state.~~

AUTH: ~~37-65-101, 37-65-102,~~ 37-1-131, 37-65-204, MCA

IMP: 37-65-101, ~~37-65-204,~~ 37-65-301, MCA

REASON: It is reasonably necessary to amend this rule for consistency and move the definition of "emergency" to ARM 24.114.301, the Board's definitions rule.

24.114.501 EXAMINATION (1) ~~Licensure may be granted to an applicant who has Applicants for licensure in Montana shall successfully passed pass the architectural registration examination (ARE). To be admitted to the national architectural examination ARE, an applicant applicants shall have completed complete the education and training requirements and have obtained obtain a council record.~~

(2) (a) ~~All eligibility Eligibility requirements shall have been must be verified by the council record and have been satisfied in accordance with the NCARB handbook for interns and architects. The handbook is available through from NCARB the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, DC 20006-1310 or the Montana board of architects office and is adopted and incorporated herein by reference.~~

(3) (2) ~~The applicant shall satisfy one of the following educational requirements Applicants shall either:~~

(a) remains the same.

(b) meet the alternate education criteria outlined in the NCARB education standards handbook. The handbook is available through the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, DC 20006-1310, or the Montana board of architects.

~~(4)~~ (3) The exam candidate must Applicants shall successfully pass all sections of the national architectural registration examination ARE and request submittal to the board of all exam scores for every section of the national exam taken passed.

(a) Applicants shall be permitted to retake any or all sections of the examination that the applicant failed to pass.

~~(5) All applicants who are registered in another state and who meet all the requirements of ARM 24.113.503 except the seismic force exam may take only that exam, and must achieve a passing score to satisfy licensure requirements.~~

~~(6)~~ (4) Examination records, pursuant to the requirements of this chapter, shall be confidential and shall not be considered public records. Nothing herein shall prevent the board from reporting applicants' scores to architectural registration boards in other jurisdictions or to NCARB.

~~(7) An applicant failing to pass the examination is entitled to re-examination on divisions of the examination that the applicant failed to pass.~~

AUTH: 37-1-131, 37-65-204, ~~37-65-303~~, MCA

IMP: 37-65-301, 37-65-303, MCA

REASON: The Board determined it is reasonable and necessary to move the definition and address for NCARB to the Board's definitions rule at ARM 24.114.301. Grammar has been amended and the rule has been reorganized throughout for easier reading and increased clarity.

24.114.502 LICENSURE OF APPLICANTS BY EXAMINATION (1) An applicant may apply Applicants for licensure by examination ~~by taking and passing the national architectural registration examination.~~ shall:

(a) submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation;

(b) take and pass the ARE;

~~(2) The applicant will submit an application on board approved forms to the board office for consideration of licensure.~~

~~(3)~~ (c) The applicant must verify the passage of all sections of the national architectural registration examination by submitting submit the examination ARE scores from the applicant's designated state; and

~~(4)~~ (d) The applicant must meet all the requirements set forth in ARM 24.114.501(1) through (4), (6) and (7).

~~(5) The applicant shall pay the appropriate licensure fee.~~

AUTH: 37-1-131, 37-65-204, ~~37-65-303~~, MCA

IMP: 37-65-301, 37-65-303, MCA

24.114.503 LICENSURE OF APPLICANTS WHO ARE REGISTERED IN ANOTHER STATE (1) ~~An applicant who holds~~ Applicants holding a valid license licensure to practice architecture in another state or jurisdiction, ~~and who is seeking licensure to practice architecture in Montana shall:~~

(a) submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation;

(b) present proof the applicant is the holder of a blue cover certificate issued by the national council of architectural registration boards (NCARB) NCARB. All such applications Applications for the certificate shall be sent to the NCARB office for processing.

~~(a) The address of the office of the NCARB is NCARB, 1801 K Street NW, Suite 1100, Washington, DC 20006-1310.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-304, 37-65-301, MCA

REASON: It is reasonably necessary to amend the rule to specify that the Board requires out-of-state licensees to submit NCARB blue-cover certificates, since NCARB does issue other certificates that would not fulfill the Board's licensure requirements.

24.114.510 USE OF TITLE ARCHITECTS-IN-TRAINING (1) Persons who are not licensed under Title 37, chapter 65, MCA, may use ~~certain titles~~ the title "architect-in-training" in representing themselves to the public, as long as such persons: the titles clearly delineate the nature and level of training. ~~Such persons may use the title "architect-in-training," provided that such persons perform their activities under the direct supervision and responsibility of a licensed architect.~~

(a) perform their work activities under the direct supervision and responsibility of a licensed architect;

~~(a) (b) the architect-in-training must have obtained the proper degree; and~~

~~(c) be are actively pursuing training toward licensure; ; and~~

~~(b) (2) the An~~ architect-in-training must cease use of the title if he/she the person ceases activities or work in pursuit of licensure.

~~(2) (3) Principals of firms employing architects-in-training may use the title "architect-in-training" as they deem appropriate when making presentations, or in promotional materials, etc.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-301, MCA

24.114.2101 RENEWALS (1) ~~Biennial renewals shall be issued by the board, upon receipt of biennial renewal fee. Licenses shall be two-year licenses and shall be renewed biennially. Notice~~ The board shall mail notice of biennial renewal shall be mailed to each licensed architect in advance of the renewal date. The notice shall be returned with the renewal fee or late renewal fee to the board office.

~~(2) The renewal fee~~ Renewal forms and fees shall be due on the date set forth in ARM 8.2.208 department rule. However, a one-month grace period

~~thereafter is provided by statute. A late renewal fee will be imposed upon~~ due for any license ~~which has not been renewed by on or before July 31. Both a renewal fee and late renewal fee will be imposed~~ due for each year a license is lapsed not renewed.

(3) A license that ~~has lapsed is not renewed for three successive years within two years of the most recent renewal date automatically terminates, and The terminated license may not be reinstated reactivated, and a new original license must be obtained, and appropriate fees must be paid.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: ~~37-1-131, 37-1-141, 37-65-301, 37-65-306, MCA~~

REASON: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination and fees. The bill was signed by the Governor on April 28, 2005, and became effective on July 1, 2005. The Board determined it is reasonable and necessary to amend the rule to comply with and further implement the amendments to 37-1-141, MCA, due to House Bill 182.

24.114.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) accepting compensation for architectural services from more than one party on a project, unless the circumstances are fully disclosed to, and agreed to ~~(such disclosure and agreement to be in writing) by,~~ in writing by all interested parties;

(e) through (k) remain the same.

(l) performing professional services which have not ~~in general~~ been authorized by the client or the client's legal representative; and

(m) remains the same.

AUTH: 37-1-131, 37-1-319, 37-65-204, MCA

IMP: 37-1-316, MCA

24.114.2402 SCREENING COMMITTEE PANEL (1) The board screening panel shall consist of three members of the board including the current president of the board, and two other board members, as chosen by the president. The president may reappoint ~~screening panel members,~~ or replace screening panel members as necessary at the president's discretion.

(2) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-307, MCA

REASON: The Board determined it is reasonable and necessary to amend the rule to specify the procedure the Board's screening panel will use to address anonymous complaints of licensee unprofessional conduct. Although the Board has and is currently following this procedure, it was never before delineated in rule.

5. The rule proposed to be repealed is as follows:

24.114.2401 COMPLAINT PROCEDURE found at ARM page 24-8335.

AUTH: 37-65-204, MCA

IMP: 37-1-308, 37-1-309, MCA

REASON: It is reasonably necessary to repeal the above rule as complaint procedures are adequately and substantially addressed in statute at Title 37, chapter 1, MCA.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Brooke Jasmin, Board of Architects, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsduc@mt.gov and must be received no later than 5:00 p.m., April 6, 2006.

7. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://architect.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Architects maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Architects administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsduc@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

10. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS
TOM WOOD, PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND
INDUSTRY

Certified to the Secretary of State February 27, 2006